

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WP(C).No. 21255 of 2015 (F)

PETITIONER:

SREEKUMAR P.K., S/O.RAJAN NAMBIAR,
PUTHAN KOVILAKAM HOUSE, WORKING AS
PART TIME SWEEPER, KOZHIKODE DISTRICT
CO-OPERATIVE BANK EVENING BRANCH,
VADAKARA.

BY ADVS.SRI.THIYYANNOOR RAMAKRISHNAN
SRI.ARUN KUMAR.P
SMT.AMBIKA RADHAKRISHNAN

RESPONDENTS:

1. REGISTRAR, CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM - 695 001.
2. KOZHIKODE DISTRICT CO-OPERATIVE BANK LTD,
REP. BY THE GENERAL MANAGER, HEAD OFFICE,
KALLAI ROAD, KOZHIKODE. PIN - 673 002.
3. GENERAL MANAGER, KOZHIKODE DISTRICT
CO-OPERATIVE BANK LTD., HEAD OFFICE,
KALLAI ROAD, KOZHIKODE.PIN - 673 002.
4. MANAGER, KOZHIKODE DISTRICT CO-OPERATIVE BANK
LTD., EVENING BRANCH, VADAKARA,
KOZHIKODE DISTRICT. PIN - 673 101.
5. SMT.M.USHA, PEON, KOZHIKODE DISTRICT
CO-OPERATIVE BANK LTD., ATHOLI BRANCH,
KOZHIKODE, PIN - 673 315.

R2 TO R4 BY ADV. SRI.R.SUDHISH
R5 BY ADVS. SRI.P.V.KUNHIKRISHNAN
SMT.PRIYANKA VARGHESE
R1 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
25-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 21255 of 2015 (F)

PETITIONER'S EXHIBITS:

EXT.P-1: TRUE COPY OF THE CERTIFICATE OF PERMANENT DISABILITY DATED 28.5.2002 ISSUED TO THE PETITIONER BY MEDICAL BOARD OF MEDICAL COLLEGE HOSPITAL, KOZHIKODE

EXT.P-2: TRUE COPY OF THE IDENTITY CARD ISSUED TO THE PETITIONER BEARING NO.KL KKD LD 3127 WITH DATE OF ISSUE 10.5.2004

EXT.P-3: TRUE COPY OF THE PASS BOOK BEARING NO.KL KKD LD 3127 ISSUED TO THE PETITIONER

EXT.P-4: TRUE COPY OF THE PROCEEDINGS DATED 24.3.2003 REGARDING APPOINTMENT OF THE PETITIONER IN THE 2ND RESPONDENT BANK.

EXT.P-5: TRUE COPY OF ORDER MEMO DATED 24.3.2003 APPOINTING PETITIONER AT THE EVENING BRANCH OF THE 2ND RESPONDENT BANK AT VADAKARA

EXT.P-6: TRUE COPY OF THE SECONDARY SCHOOL CERTIFICATE OF THE PETITIONER

EXT.P-7: TRUE COPY OF THE APPLICATION DATED 4.10.2014 PREFERRED BY THE PETITIONER TO RESPONDENTS 3 AND 4.

EXT.P-8: TRUE COPY OF THE REPRESENTATION OF THE PETITIONER DATED 10.2.2015 TO THE 3RD RESPONDENT

EXT.P-8(a): TRUE COPY OF THE ACKNOWLEDGEMENT CARD EVIDENCING RECEIPT OF EXHIBIT - P8.

EXT.P-9: TRUE COPY OF THE PROCEEDINGS DATED 25.3.2015 BEARING NO. HO:EST/2015 OF THE 2ND RESPONDENT BANK PROMOTING THE 5TH RESPONDENT AS PEON.

EXT.P10: TRUE COPY OF THE REPRESENTATION OF THE PETITIONER DATED 15.06.2015 TO THE FIRST RESPONDENT

EXT.P10(a): ACKNOWLEDGEMENT CARD EVIDENCING RECEIPT OF THE REPRESENTATION OF THE PETITIONER DATED 15.06.2015 TO THE FIRST RESPONDENT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.21255 of 2015 F

Dated this the 25th day of November, 2015

JUDGMENT

The petitioner, working as a Contingent Sweeper in the fourth respondent branch of the second respondent Bank, sought promotion to the post of Peon claiming the benefit of 3% reservation provided in the statute for the physically challenged persons. In fact, he has sought a writ of mandamus to respondents 1 to 4 to grant him promotion to the post of Peon on the basis of sub-section (5) of Section 80 of the Kerala Co-operative Societies Act, 1969 ('the Act' fore brevity).

2. The learned counsel for the petitioner has made elaborate submissions on the issue of applicability of reservation across the board involving all cadres encompassing even the promotional post. He has made efforts to draw succor for his submissions from Section 80

(5) of the Act, Sections 33 and 36 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and also the decision of the Hon'ble Supreme Court in **Union of India and Another v. National Federation of Blind and Others** (ILR 2013 (4) Ker. 279).

3. Indeed, the learned counsel for the respondent Bank, as well as the learned counsel for the fifth respondent, who has been promoted in the promotional vacancy, has strenuously contested the claim of the petitioner. In the end, the learned counsel for the respondent Bank has submitted that the issue of the petitioner's entitlement for promotion under the 3% quota said to have been provided for even in the promotional categories depends on Rule 187 of the Kerala Co-operative Societies Rules and also the Recruitment (Amendment) Rules for the District Co-operative Banks, 2014.

4. Eventually, the learned counsel for the respondent Bank has submitted that the petitioner has already filed Exhibit P10 application before the Registrar complaining against what is said to be the unjust denial of promotion to him under 3% quota meant for the physically challenged persons. According to him, the petitioner has to first exhaust his remedy before the Registrar.

5. Indeed, whatever be the merit of the petitioner's contentions, the fact remains that he himself has approached the Registrar by filing Exhibit P10 application. While the matter is pending before the Registrar, any consideration of the same issue by this Court amounts to parallel adjudication, which this Court is not inclined to undertake.

In the facts and circumstances, without prejudice to the rights of any of the parties to the lis, this Court disposes of the writ petition to the following effect:

The Registrar shall consider the petitioner's Exhibit P10 application taking into account the statutory as well as the precedential position, including the decisions rendered by this Court as well as the Apex Court, if cited. Needless to observe that the Registrar may dispose of Exhibit P10 application as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

Dama Seshadri Naidu, Judge

tkv